

which was held by the administratrix of said Benjamin; that said Benjamin died, three or four years ago, intestate, leaving a widow, the administratrix above mentioned, and several infant children, all of whom reside on the estate and receive the rents and profits thereof; and praying, that the property might be decreed to be sold to pay said debt, or a writ of *fiery facias* issued, to enforce said decree. The defences made were, that the decree having passed more than three years before the petition was filed, it could only be revived by a regular bill of revivor; that a guardian should have been appointed to take the infant's answers; that there was no allegation of an insufficiency of the personal estate; that the debt had been fully paid; and, that the cause of action, under the said decree, was or ought to have been, included in the bill filed in this court by the petitioner, on the 18th of January, 1849, and if not, the two causes ought, at least, to be consolidated now.]

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THE CHANCELLOR:

The petition filed in this case by Robert Franklin, on the 3d of January last, is founded upon the act of 1842, ch. 229; and, as must be conceded, must stand or fall, according as it may or may not be warranted by the provisions of that act. Its object is to procure, in a summary way, the execution of a decree passed by this court, on the 25th of July, 1839, either by a sale of the property supposed to be bound specifically by the decree, or an execution of *fiery facias* to make the money.

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[After briefly alluding to the facts of the case, the Chancellor proceeded to notice the defence taken; that the decree ought to be revived by a bill of revivor.]

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The act of assembly, upon which the petitioner relies, is a remedial law, and, to be construed liberally, to advance the remedy and obviate the mischief; but still, the court does not feel itself at liberty to stretch its provisions, to cases which do not appear to have been within the contemplation of the legislature, because, it may think that the convenience of parties—